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NEUTRAL RIGHTS AND DUTIES

BY C. T. REVERE

FROM the standpoint of experience the question of contraband furnishes one of the most orthodox developments of the present war. It was to be expected that a situation would arise which would call forth a communication such as the United States addressed to Great Britain protesting against the restrictions placed upon our commerce with neutral Europe. It was equally certain that Great Britain would receive the communication in a spirit of amity and as a matter of course. Such an attitude was foreshadowed by her centuries of naval practice as both belligerent and neutral.

Since the early part of the seventeenth century every war involving maritime operations has revived the inevitable conflict between belligerent privilege and neutral rights. Prior to that time the neutral had no rights except such as could be held by force of arms or fear of reprisal.

Although recognizing modern concessions, the belligerent always looks upon so-called peaceful commerce as pernicious, frequently giving as much cause for anxiety as the hostile thrust of a declared opponent. The aid thus furnished the foe may be worth a whole army corps. Complications may arise, thus provoking pacific into combatant. The strain on self-control comes at an awkward time. It is hard to shift from berserk exercise of the mailed fist upon the enemy, and extend kid-gloved finesse to the nuisance who holds his friendship in such nice balance that he is equally facile in dealings with either side.

In fact, the intercourse of nations provides no phenomenon more typical in its manifestations than the outcry of the belligerent over the suspicious commercial activities of the professed bystander—unless it be the outcry of the professed bystander over the seizure of his goods and the interference to his trade.

As the sole high-powered neutral, the United States occupies a position of peculiar opportunity and responsibility. Both

sides place our good-will above all other considerations except victory and national honor. Since the first shock of the conflict it is seen that commercial advantage of an undreamed extent may come to us. Our exported products may even determine the issue of the war.

Quite apart from the rôle we may be called upon to play in the peace negotiations, our conduct as a non-combatant may influence the lines of historical development as much as the course of the leading participants in the war. Although it is too early to venture such an assumption, it is possible by our policy that we may add some new principle to the code of conduct between nations. At any rate, there has come to us an opportunity, such as seldom is given governments or chancelleries, of putting on an unprecedentedly broad plane a discussion that heretofore has been limited by the narrow dictates of self-interest.

It has been more than a century since the principle of contraband has been so strongly involved in international disputes, unless we except the Civil War cases, which belong more properly to the category of blockade. For this reason it might be advisable to review some of the commercial incidents of the war, with their effect on our trade as a neutral nation, and our rights and duties as set forth by precedent.

It was to be expected that trade with Germany would cease with the declaration of hostilities. England's maritime supremacy gave assurance that commerce would be confined to the accessible ports of the Allied nations and neutral countries. No restrictions, of course, were placed upon shipments to Great Britain, France, Belgium, or Russia. The difficulty has arisen entirely over our trade with neutral countries, chiefly on the ground that the destination of the cargoes might be questionable.

British warships held up American merchant-vessels carrying cargoes of copper, gasoline, food stuffs, rubber products, naval stores, and other commodities on their way to such points as Genoa, Rotterdam, and Gothenburg. The alert British naval officer could see no occasion for the growing commercial importance of these neutral ports than the baneful desire to make a large profit by the transshipment of these goods to Germany and Austria.

At the outbreak of the war the generally recognized list of contraband articles, as set forth in the Declaration of London in 1909, consisted of eleven groups of articles. By the Order in Council issued October 29, 1914, Great Britain had considerably more than doubled this list, placing therein a large

number of articles which never had been considered in the light of contraband. Exporters and importers of neutral nations heatedly protested that at this rate it would not be long before the whole range of commerce would be under ban.

Additional hardship was imposed by the construction placed on cargo destination. Our right to ship copper to Italy was admitted, but the attitude of British naval officers practically placed upon the shipper of this metal the obligation to guarantee that none of it should ultimately fall into German hands. The examples cited are sufficient to illustrate the purpose of this country's protest which has assumed pre-eminence as an international incident.

Consideration of contraband involves two phases: first, the character of the merchandise; second, the destination of the merchandise. Attempts to classify contraband have engaged the attention of authorities on international law for more than two centuries. The line of grouping set down by Grotius is generally followed to-day. It makes three classes: contraband—those articles which are of use chiefly or only in war; non-contraband—those which are of no use in war; conditional contraband—those which are useful both in war and in peace.

There is no controversy over the general principle of the classification. The trouble arises when specific articles are added to the list of absolute contraband. No two treaties between different nations agree exactly on the list of articles which shall be regarded as contraband or innocent. Military necessities have changed with the advance in industry. Copper products were not given a thought in the Peace of Utrecht. They are noxious articles to-day as a result of our electrical development. Naval stores occupied a high place in the contraband list in the days of sailing-vessels. With the development of the steamship they lost their illegal character. In the present war rosin and turpentine are back in the contraband list, not as naval stores, but as ingredients for explosives.

The essential nature of the problem appears to preclude the likelihood of any definite and final agreement on the contraband list. Conditions are changing so much that restriction by specific articles might be highly injurious to a belligerent.

On the other hand, an undue extension of the contraband list may result practically in a blockade. Precedent in international law is strongly against such an advantage for a belligerent who holds command of the sea. The tendency is toward the view that if one belligerent decides to shut off the enemy

from commerce, an effective blockade must be maintained. A blockade of an effective character is both dangerous and expensive, and the hostile who attempts it is entitled to the fruits of his effort. Any student of warfare can see at a glance the risk attendant upon a blockade of Hamburg and Bremen. On the other hand, it would be comparatively easy, by stopping neutral vessels at Gibraltar, Suez, the English Channel, and the entrance to the North Sea, to prevent any shipment whatever from reaching the Germanic allies.

Neutrals, however, can and do insist strongly that the contraband list shall not be extended unduly beyond the "criterion of warlike usefulness." The privilege must not be used as a weapon against the civil population of the enemy country. Articles like foodstuffs are noxious only when destined to the naval or military forces of the foe. A recent instance of this was furnished by our protest in 1904 over Russia's seizures of rice shipments to Japan. The most notable example, however, was furnished by our controversy with Great Britain in 1793, when an attempt was made to block all shipments of grain to France in an effort to reduce that country "to reasonable terms of peace."

Jefferson, then Secretary of State, declared that the position that provisions were contraband "in the case where the depriving an enemy of these supplies is one of the means intended to be employed for reducing him to reasonable terms of peace," or in any case but that of a place actually blockaded, was "entirely new"; that reason and usage had established "that, when two nations go to war, those who choose to live in peace retain their natural right to pursue their agriculture, manufactures, and other ordinary vocations; to carry the produce of their industry, for exchange, to all nations, belligerent or neutral, as usual; to go and come freely, without injury or molestation; and, in short, that the war among others shall be, for them, as if it did not exist."

Cargo destination is a feature that gives to a belligerent even more trouble than the character of the shipment. There is nothing illegal in trade between one neutral country and another, whether the articles be absolute contraband or conditional contraband. The sudden increase in the trade of ports in neutral countries adjacent to the blockaded belligerent furnishes occasion for much cynical comment and considerable active suspicion. During our Civil War the port of Nassau on the island of New Providence did such a thriving business that it

became the envy of Liverpool and London. Federal cruisers unkindly took the view that this commercial activity was of an illegal character—that the ultimate destination of the shipments was not Nassau, but more probably Key West or Charleston, which were under blockade.

Here we come to the so-called “doctrine of continuous voyages,” which furnishes one of the knottiest problems in international law. Belligerents, irritated over continued aid given the enemy, are usually inclined to overstep their privileges and rest their case on the mere suspicion that the destination of a shipment is hostile. Precedent, however, is quite clear upon the point that there must be *proof*, very strong if circumstantial, that the destination is illegal, in order to justify seizure. The mere fact that contraband trade may have been general with a certain port gives no ground for action in a specific instance.

In the present war the only new feature which has marked the controversy is furnished by the suggestion that cargoes be certified as to character of contents and destination. Obviously such a step would do away with much of the irritation on the part of Great Britain and her allies, while a shipper acting in good faith could raise no objection to an examination which would give his goods a clean bill of health.

Every nation has its individual lines of tendency, all determined by what is considered to be the need of the future. For example, Great Britain has tended toward a wide contraband list. Consistency in her desire to make seizures in time of war is held to be more valuable than the right of protest over interference with her commerce. Small maritime nations like Holland and Denmark lean toward restriction of the contraband list, as the right of protest against injury to commerce while neutrals is likely to be more important than the privilege to make seizures in war. The policy of the United States quite naturally has favored a limited contraband list, as a European war would be more than likely to find us neutral. In other words, we favor a tendency which affords the most protection to our own commerce rather than one which will enable us to block most effectively the ability of a possible enemy to obtain supplies during a war.

Notwithstanding considerations of self-interest under trying conditions, maritime practice has adhered closely to certain well-developed rules. Some of these are more clearly defined than others, but under no circumstances can violations be so flagrant as to pass without protest and ultimate penalty.

Whenever Great Britain has permitted the exigencies of the moment to overcome her prudent regard for equitable precedent, she always has taken occasion to disavow such acts in order that her practice might be purged of damning inconsistencies.

Undoubtedly the chief reason for opposition to the agitation in Congress favoring prohibition of contraband shipments is based on the fear of laying an embarrassing precedent. A nation too high-minded to ship war supplies to a belligerent country might be in no position to protest against similar action by neutral countries in case we should become involved in a war. International custom is much better qualified to deal with such a situation than the legislative bodies of individual countries, no matter whether such statutory prohibition is inspired by Utopian ideals or racial partisanship. Such legislation would be broadly regarded as unneutral. It would not receive the academic sanction of its beneficiaries, no matter how cordially they might welcome it.

Although the over-zealous British naval officer may transcend the bounds, it is safe to say that the record of Great Britain, so far as her official notes or prize-court decisions are concerned, will be marked by unswerving adherence to established practice. Precedent will be left without a smudge to serve as reference when she may have occasion to stand on her rights as a neutral. The dominating impulse which is to be traced throughout the warp and woof of international law may be found in the determination to permit no act of Philip belligerent to prejudice the case of Philip neutral at some later date.

Prize-court decisions, except in rare instances, have been characterized by an equity as broad as that which would actuate the most exalted international tribunal. To the layman this never fails to appear as amazing, in view of the fact that the procedure is conducted entirely by the country making the capture. Sir William Scott, afterward Lord Stowell, who became Judge of the High Court of Admiralty in 1798, in delivering his judgment in the case of the *Maria* said:

The seat of judicial authority is, indeed, locally here, in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm; to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden, as a neutral country, which he would not admit to belong to Great Britain in the same

character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question—a question regarding one of the most important rights of belligerent nations relatively to neutrals.

Despite the eventual justice of the prize court, the harm done to neutral commerce can never be measured by the compensation afforded by belligerents. Damages may be awarded for illegal seizures and detentions, but no reparation is offered for the paralysis that is visited upon trade. Commerce suffers more through the cargoes that are not shipped than from those that are captured.

Unfortunately the United States has been forced to pay an enormous penalty through the failure of the Allies to come to more definite understanding with the neutral nations contiguous to Germany. There is nothing noxious in shipments of gasoline and copper to consignees in Rotterdam and Genoa. The ultimate destination, possibly, may be hostile. Such a situation, it would seem, should be corrected through embargo by Italy and Holland rather than by seizures on the high seas. An arrangement of this sort seems in process of adjustment, and it will be interesting to note its effect upon the desire of neutral merchants to make importations at the present rate.

Enough aggravations have arisen out of the present situation to justify the prophecy that the rules of conduct relating to the eternal clash of neutral and belligerent interests will be made the subject of early and paramount consideration. To the ultra-pacifist this brings a vision of the super-State, all-powerful, enforcing as world policeman the decrees of the international tribunal. Conservatives, with their abhorrence of the factitious, will rest content with some new principle added to the code of international law, confident that slower growth will bring a surer understanding. International law does exist, Belgium's fate to the contrary notwithstanding. Transgressions are punished by world reprobation, which sometimes falls more heavily than the club of the policeman.

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